
(2013) 02 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No. 33689 of 2011 (APMC)

Mohan Murali Traders

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 — Section 9(2)
Karnataka Agricultural Produce Marketing (Regulation of Allotment of Property in Market Yards) Rules, 2004 — Rule 7

Citation : (2014) 2 AKR 128 : (2013) 2 KarLJ 503 : (2013) 3 KCCR 2152

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : K.V. Mohan Kumar, for the Appellant; Gopal Bilalmane, Government Pleader and Sri H.K. Thimmegowda, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash the order dated 25-1-2011, Annexure-A passed by the second respondent refusing to give approval for allotment of site in favour of the petitioner in the market yard of Chikkaballapur. Petitioner is a wholesale business man in the notified agricultural product in the third respondent-market yard. Petitioner is the holder of a licence to do the business in the market yard. Petitioner do not own any site or building in the market yard. Further the petitioner do not suffer any disqualification for allotment of site. In the circumstances, the third respondent allotted site in favour of petitioner as per Annexure-C, dated 11-5-2010. The third respondent forwarded the allotment made in favour of petitioner for approval to the second respondent as required u/s 9(2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. Under the impugned order the second respondent refused to accord approval on the ground that between 2009 and 2001 petitioner was nominated as Director and later as Vice-President to the third respondent-Marketing Committee and

basically he is a farmer. Aggrieved by this impugned order at Annexure-A petitioner is before this Court.

2. Heard arguments on both the side and perused the entire writ papers.

3. Annexure-B is the order dated 23-6-2009 nominating the petitioner as Director of third respondent-society. A perusal of this order at Annexure-B do not specify that petitioner was nominated as Director of the third respondent-society in his capacity as farmer. Therefore, the reasoning of the second respondent that petitioner is a farmer and not a trader is incorrect. Secondly, it is seen from the record that petitioner is holding licence to carry on business in the notified agricultural products in the third respondent-market yard and he is doing business. This aspect of the matter is not considered by the second respondent while passing the impugned order.

4. Rule 7 of the Karnataka Agricultural Produce Marketing (Regulation of Allotment of Property in Market Yards) Rules, 2004 specify the eligibility for allotment and the same is as under:

7. Eligibility.--(1) No site, shop, godown or shop-cum-godown, in the market yard shall be allotted either on lease-cum-sale basis or leave and licence basis to a person or an institution or organisation who is not a licensed market functionary and who is a defaulter in payment of any dues either to the Seller or to the Market Committee and not engaged either in the marketing of notified agricultural produces or the allied activities connected with Agriculture, Horticulture or Animal Husbandry except the State or Central Warehousing Corporation, Service institutions, registered associations of market functionaries or Banks or for setting up of petrol bunk or site measuring 10" x 10" for establishing only STD booths or milk parlors or for construction of common amenities for the market users.

(2) Allotment under these rules shall not be made to a licensed market functionary who already owns a site, shop, godown or shop-cum-godown or other building in the market yard either in his name or in the name of the firm in which he is a partner.

(3) If the shop, shop-cum-godown or godown is lying vacant after the allotment process under Rule 13 is over and the market committee receives any application of allotment of the same from private institutions etc., the market committee after considering whether such allotment affects the trading activity in the yard etc., may submit proposal to the Director of Agricultural Marketing for approval. The Director of Agricultural Marketing after satisfying himself and recording reasons for the same may give approval to such proposal.

It is not shown from the impugned order as to what is the disqualification suffered by the petitioner in terms of Rule 7 of the Rules. In the absence of any such disqualification for allotment of site the impugned order is bad in law. Accordingly, the following.--

ORDER

(i) Writ petition is hereby allowed.

(ii) The impugned order at Annexure-A, dated 25-1-2011 is hereby quashed.

(iii) The matter is remanded to the second respondent for reconsideration in accordance with law.